

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
REGION 8

COMMUNICATIONS WORKERS OF AMERICA
AND COMMUNICATIONS WORKERS OF AMERICA,
LOCAL 4309 (AT&T TELEHOLDINGS, INC., D/B/A
AT&T MIDWEST AND THE OHIO BELL TELEPHONE
COMPANY-Employer)

CASE NO. 8-CB-10487

and

SANDA ILIAS,

An Individual

**RESPONDENTS' REPLY BRIEF IN SUPPORT OF MOTION TO STRIKE ACTING
GENERAL COUNSEL'S OPPOSITION TO MOTION TO REOPEN OR SUPPLEMENT
RECORD.**

Respondents, Communications Workers of America ("CWA") and CWA Local 4309 ("Local 4309") (collectively, "Respondents" or the "Union") recently filed a Motion to Strike Acting General Counsel's ("G. C.") Opposition to Respondents' two Motions to Reopen or Supplement the Record. G. C. has now filed a Response to the Motion to Strike. This Reply Brief is meant to answer G. C.'s Response to the Motion to Strike.

G. C. offers four claimed justifications for its position: 1) Because Respondent's original motion is still pending G. C.'s opposition will assist the Board in making a determination; 2) Respondent did not assert that it would be prejudiced or harmed; 3) G. C. was not obligated to seek an extension under Rule 102.111(b) because there was no specific date by which it had to

respond; 4) Rule 102.121, which calls for liberal construction of the rules to effectuate the Act's purposes, would best be served by consideration of the G. C.'s position.

Conspicuously absent from G. C.'s Response is any assertion that it complied with the mandatory language of Rule 102.24 to file such a response "promptly". Wisely, G. C. did not try to suggest that its dilatory efforts met the Rule's "promptly" requirement. Nor did G. C. offer an explanation as to why it was so tardy in filing its response. These failings alone ought to be a sufficient basis upon which to grant the Motion to Strike.

While it is true that Respondents' original motion is still pending, that fact in no way addresses G. C.'s failure to comply with the Board's mandatory rules. If the standard for compliance with the Board's timeliness rules for responding to a motion were only applicable if the initial motion had not already been decided, those rules would be virtually meaningless given the Board's heavy case load.

It is also true the Respondent did not use the words "prejudice" or "harm" in its Motion to Strike. Rule 102.24 does not require prejudice or harm by an opposing party for the filing party to be held to the Board's timeliness requirements. Further, prejudice or harm is implicit under the circumstances of this case. As Respondents noted in their Motion to Strike, all other parties to this proceeding had already fully briefed the issues as to both Motions to Supplement, long before G. C. sought to enter the fray. If G. C.'s Response is permitted to stand, Respondents will be prejudiced and/or harmed by having to, once again, brief these issues. In addition, because of its official position within the Act's framework, it stands to reason that G. C.'s view is often more influential than is the view of other, less statutorily prominent parties. Thus, the significance of G. C. taking a position on a disputed issue, on which it had not heretofore weighed in, provides an additional source of prejudice and harm.

Whether G. C. was obligated to seek an extension or not under Rule 102.111(b) is beside the point. Rule 102.24 mandates a prompt filing. G. C. does not even assert that it complied with this mandate. It is clear from the record and common sense that it did not comply. That lack of compliance with a mandatory requirement should be the end of the story.

Finally, while the Board's Rules call for liberal construction to effectuate the purposes of the Act there is simply no way to construe the language "shall be filed promptly", liberally or otherwise, to mean something other than what it says. Liberal construction does not mean rewriting the rules.

CONCLUSION

For all of these reasons and those set forth in the Motion to Strike, it is clear that G. C. failed to comply with the mandate of the applicable Board Rules and Regulations. As such, the Response to both of the Respondents' Motions to Supplement the Record that was recently filed, should be stricken for non-compliance with the Board's Rules and Regulations.

Respectfully submitted,

/s/ Theodore E. Meckler

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SERVICE

I certify that on the 10th day of January, 2013, this Reply Brief was electronically filed at the e-filing section of the Board's website. Counsel for the other parties to this proceeding were sent copies via email at their below listed email addresses:

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